230684

Honorable Daniel R. Elliott, III
Chairman
Surface Transportation Board
395 E Street, SW
Washington, D.C. 20423

July 25, 2011

Re: Ex Parte No. 705, Competition in the Railroad Industry

Dear Chairman Elliott:

The Alliance for Rail Competition ("ARC") and the various State agricultural commodity committees listed below (collectively, "ARC, et al.") hereby supplement their written and oral testimony in the proceeding as follows. ARC is also participating in the Multi-Party Supplemental Comments being filed by CURE, et al. and those of the Interested Parties also being filed.

As detailed in previous comments by ARC, et al. (as opposed to the "Interested Party" comments), there are large regions of the country, including entire States such as Montana, North Dakota, Colorado and others, in which there is little or no likelihood of increased rail competition.

Even if railroads were inclined to compete for shippers' business by offering rates with less elevated profit margins or by providing higher quality service, access remedies are unlikely to be successful when alternative rail service is hundreds of miles away. And, as the testimony in this proceeding demonstrated, many railroads that could provide effective competition decline to do so.

As might be expected from the absence of effective, or any, rail competition in these regions, many of which are west of the Mississippi River, the result is high rail rates and mediocre or poor service quality. Shippers and their business can be, and are, generally taken for granted by major railroads. The North Dakota Grain Dealers Association filed a June 24, 2011 letter to the Board about poor service, including trains arriving so much later than promised that the elevators must hold their crews for extra hours or send them home for a rest period and call them back later. This often leads to unreimbursed overtime and unnecessarily disrupts the lives and schedules of employees. We continue to hear reports of Shuttle elevators in Montana getting hit with extremely high demurrage charges caused in part by the railroads' inconsistent or untimely delivery of rail cars. We also hear from all of ARC's members about deficiencies in service by the railroads they use.

Shippers represented by ARC, et al. are more likely to benefit from increased protection against unreasonable rail rates and charges and unreasonable railroad practices than from increased competitive remedies such as improved access, increased switching, reopening of the Bottleneck Decisions, or action on paper barriers.

ARC et al. does not object to efforts by the Board to eliminate or reduce existing barriers in law or policy to increased rail competition for shippers that might thereby be benefited. Moreover, increased rail competition could lead to more efficient railroad operations, as was the case with increased competition in the trucking industry and other industries.

During the hearing in this proceeding, Commissioner Mulvey asked what the Board can do to address shipper concerns. The Board should consider ways to reduce existing barriers in law and policy to relief from unreasonable rail rates and charges, and relief from unreasonable rail practices. ARC, et al. commend the Board for its recent decision reducing filing fees for formal complaints alleging unlawful rates or practices, but more needs to be done.

ARC, et al. urge the Board to eliminate relief caps for its simplified rate case remedies. These caps allow railroads to retain or resume unreasonable rates to the extent of unlawful pricing exceeding the cap. In effect, railroads are rewarded for imposing rates that are more rather than less excessive. This anomaly must be eliminated.

The cost and time spent in unreasonable rate and practice litigation are also excessive. What can the Board do? If the US cannot copy the Canadian model of final offer arbitration and inter-switching, the Board should nevertheless strive to maximize the effectiveness of voluntary mediation and arbitration. In particular, the Board should facilitate alternative dispute resolution as a way to challenge unreasonably high railroad charges. STB rate reasonableness methodologies are poorly suited to the resolution of disputes over charges, and the amounts involved are generally lower than amounts involved in rate cases. Nevertheless, railroad charges continue to

proliferate, the aggregate amounts collected from many shippers can be large, and the absence of any effective remedy should be corrected.

Respectfully submitted,

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Representing
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Colorado Wheat Administrative Committee
Idaho Barley Commission
Idaho Wheat Commission
Kansas Wheat Commission
Nebraska Wheat Board
Oklahoma Wheat Commission
South Dakota Wheat Commission
Texas Wheat Producer Board
Washington Grain Commission
Montana Farmers Union

Dated: July 25, 2011